HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 761 2004(M/S)

Sanjee Kumar Mahajan (Petitioners.)

Versus.
Civil District Judge, Srinagar Garhwal
& others. (Respondents)

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 17.8.2004.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

WRIT PETITION NO. 761 M/S 2004

Sanjeev Kumar Mahajan. ….. Petitioner.

Versus

Civil Judge (S.D.) Srinagar Garhwal
and others. . … Respondents

HON'BLE RAJESH TANDON, J.

Heard Miss Seema Sirohi counsel for the petitioner.

By the present writ petition the petitioner has challenged the order dated 19.07.2004 passed on the application 71-Ka.

Brief facts of the case are that the suit was filed by the petitioner who is the plaintiff in the suit stating therein that the order passed on 19.02.1988 by the Collector, Pauri Garhwal may be declared null and void. Plaintiff has also prayed for permanent injunction not to interfere with the land of the petitioner where the petitioner has constructed a Khokha and he may not be evicted accordingly.

During the pendency of the suit the petitioner has filed the application for amendment of the plaint to the following effect:

"(अ) – कि, वाद पत्र के प्रस्तर सं04 के पष्चात् व प्रस्तर 5 से पूर्व निम्न प्रस्तर 4 क जोडने की अनुमति दी जाय।

4क– कि, नगरपालिका श्रीनगर गढवाल में उ0प्र0 रेगुलेषन आफ बिल्डिंग आपरेषन एक्ट 1958 प्रभावी है और वादी के निर्माण पर न तो नगरपालिका परिषद श्रीनगर गढवाल और न ही निहित प्राधिकारी,

रेगुलेशन एरिया श्रीनगर गढवाल द्वारा कोई कार्य वाही नहीं की क्योंकि वादी द्वारा कलैक्टर पौडी गढवाल को खोखे निर्माण की रोड साइड रैन्ट कन्ट्रोल एक्ट की स्वीकृति के लिये प्रार्थना पत्र भी प्रस्तुत किया। इस प्रकार से वादी को विवक्षित रूप से स्वीकृत वादी की स्वयं के हक की भूमि पर निर्माण करने की प्राप्त हो गयी।''

From the copy of the application of amendment it will appear that a formal plea was taken that building operation act, 1958 is applicable and no action has been taken against the petitioner for constructing the Khokha and he has already applied for permission under the Road Side Control Act and the same has been obtained in favour of the petitioner. The aforesaid amendment is a legal amendment and it neither changes the nature of the proceedings nor cause of action of the suit.

The learned Civil Judge has rejected the amendment only on the ground that this plea has already been taken in para 4 of the plaint. In para 4 of the plaint it has been mentioned that the Khokha has been constructed but with regard to the permission of under Road Side Control Act has not been taken, and as such, the same will not change and alter the position in any way .

In G.K. Pillai Vs State the Apex Court has interpreted Order VI Rule 17 CPC. The same has been explained in the case of Bachan lal Vs State of Uttaranchal. In the judgment of Bachan Lal the following principles have been adopted:

“Order 6 Rule 17 has been interpreted by the Hon’ble Supreme Court in various decisions and the Apex Court has given guide lines for the law courts that the courts while deciding such prayers should not adopt a hypetechnical view. Aforesaid guide lines have been given the Apex Court in B.K. Narayan Pillai Vs. Parameswaran Pillari and another (2000) 1 SC Cases 712. It has also been emphasized in the aforesaid decision that technicalities of law should not be permitted to hamper the court in administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled multiplicities of litigation.

Admittedly in the present case cause of action which the plaintiff has pleaded is cancellation of patta in his faovur, either in the original pleadings or in the amended pleadings he is not chaning the cause of action. The cause of action still is the same i.e. cancellation of patta and he wants to get it declared null and void. Therefore, it is fit case where the observations of the Hon’ble Supreme Court that technicalities of law should not be permitted of hamper the court in administration of justice and further that in order to avoid uncalled multiplicity of litigation the amendment has to be allowed.

The intention behind the amendment is two fold; one to avoid multiplicity of litigation and another to minimize litigation. On the case Raghu Thilak D. John Vs. S. Rayappan And others (2001) 2 S.C. Cases 472 the Apex Court has held as under:

If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimize the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averment made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We fell that in the circumstances of the case of plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayer for."

In view of the aforesaid principles laid by the Apex Court as well by this court, the Order dated 19.07.2004 is quashed. The amendment shall be incorporated by the petitioner as prayed for. The writ petition is allowed. No order as to costs.

(Hon' bleRajesh Tandon J.)

Dated: August 17, 2004.
S.S. Negi.